

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

BRUCE SENATOR,)	
)	
Petitioner,)	No C 08-4122 VRW (PR)
)	
vs.)	ORDER OF DISMISSAL
)	
UNITED STATES SECURITIES AND)	
EXCHANGE COMMISSION,)	
)	
Respondent.)	

Petitioner, a state prisoner incarcerated at the California Men's Colony in San Luis Obispo, has filed a pro se petition for a writ of mandate compelling the United States Securities and Exchange Commission ("SEC") to investigate and account for allegedly missing registered securities.

The federal mandamus statute provides that "[t]he district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff." 28 USC § 1361. Mandamus relief is only available to compel an officer of the United States to perform a duty if: (1) the petitioner's claim is clear and certain; (2) the duty of the officer is ministerial and so plainly prescribed as to be free from doubt; and (3) no other adequate remedy is available. Fallini v Hodel, 783 F2d 1343, 1345 (9th Cir 1986). Mandamus relief is not in order here

1 because the investigation petitioner seeks is discretionary. See Stang v IRS, 788
2 F2d 564, 565 (9th Cir 1986) (mandamus writs appropriate only when federal
3 officer, employee or agency owes a "nondiscretionary duty" to petitioner that is
4 so plainly prescribed as to be free from doubt).

5 The petition for a writ of mandate is DENIED. The clerk shall enter
6 judgment in accordance with this order and close the file.

7 SO ORDERED.

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9 VAUGHN R WALKER
10 United States District Chief Judge
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